IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

WP(C).No. 37242 of 2004(H)

CMA.98/2004 of ADDL.DISTRICT COURT, THRISSUR
I.A.11492/03 IN O.S.NO.2078/98 OF THE III ADDL.MUNSIFF,THRISSUR.

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PETITIONER:

BIJU,S/O.VIJAYAKUMAR,
ELAKKALAKKAL HOUSE,PERINCHERI DESOM,
CHEVOOR VILLAGE,THRISSUR TALUK.

BY ADV. SRI.JIJO PAUL
SMT.SINDHU MURALEEDHARAN

RESPONDENT:

DASAN,S/O.KARAPPAN,
KUNNATHULLI VEETIL HOUSE,PANACHIKKAL DESOM,
AYYANTHOLE VILLAGE,THRISSUR TALUK.

BY ADV. SRI.T.RAJASEKHARAN NAIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 37242/04)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF THE JUDGMENT IN O.S.NO.2078/98.

EXT.P2: TRUE COPY OF THE PETITION FILED BY THE PETITIONER BEFORE THE SUBORDINATE JUDGE'S COURT, THRISSUR AS I.A.11492/03 IN O.S.NO.2078/98.

EXT.P3: TRUE COPY OF THE COUNTER STATEMENT FILED BY THE RESPONDENT IN EXT.P2.

EXT.P4: TRUE COPY OF THE I.A.11369/03 IN O.S.NO.2078/98 BEFORE THE MUNSIFF COURT, THRISSUR.

EXT.P5: TRUE COPY OF THE COUNTER STATEMENT FILED BY THE RESPONDENT IN EXT.P4.

EXT.P6: TRUE COPY OF THE ORDER DISMISSING EXT.P2 DATED 29.5.2004.

EXT.P7: TRUE COPY OF THE ORDER DISMISSING EXT.P4 DATED 29.5.2004.

EXT.P8: TRUE COPY OF THE MEMORANDUM OF APPEAL IN CMA NO.98/04 BEFORE THE DISTRICT COURT, THRISSUR.

EXT.P9: TRUE COPY OF THE ORDER IN CMA 98/04 DATED 20.10.2004 OF THE DISTRICT JUDGE, THRISSUR.

EXT.P10: TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED BY THE ASSISTANT SURGEON OF THE DISTRICT HOSPITAL, THRISSUR.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.37242 of 2004

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Dated: 6th June, 2007

JUDGMENT

The petitioner who suffered an ex parte decree for recovery of money challenges in this Writ Petition under Article 227 of the Constitution the orders of the trial court dismissing his application for setting aside the ex parte decree and the judgment of the learned District Judge dismissing the appeal against that order. There was gross delay in the matter of filing the application to set aside the ex parte decree. The reason stated in the affidavit in support of the application for condonation of delay was that the petitioner was hospitalised in the District Hospital, Trichur from 27.10.1999 till 16.11.1999 due to typhoid. No document was produced before the trial court to prove the alleged hospitalisation and treatment. But before the appellate court a medical certificate Ext.P10 was produced. The learned District Judge noticed that Ext.P10 is issued on 22.11.2003, i.e. more than four years after the alleged hospitalisation and treatment by an Assistant Surgeon in the District Hospital and that the certificate at any rate will not prove the claim of the petitioner that he was treated as an inpatient in the District Hospital during the relevant time. The District Judge also noticed that even if

Ext.P10 certificate is taken as correct, then also the petitioner has not offered any explanation for filing the written statement on 18.10.1999 when the case actually stood posted for filing of written statement. It cannot be said that the courts below erred totally in exercising their discretion in the matter of condoning the delay caused in the matter of filing the application for setting aside the ex parte decree. However having regard to the principles laid down by the Supreme Court in **Collector, Land Acquisition, Anantnag v. Katiji** (AIR 1987 S.C. 1353) it lhas to be noticed that the policy of law is to have all causes adjudicated on their merits. Learned counsel for the petitioner submits that there were serious contentions to be raised. But it should not be forgotten that if this court grants opportunity to raise those contentions at this distance of time, that will be interfering with a very valuable right which has accrued in favour of the respondent-plaintiff. Therefore interfering with the impugned order unless it be on very stringent conditions will not be justified. As on date the amount due under the decree inclusive of the cost will be above Rs.50,000/-. The petitioner is to be directed to furnish bank security for at least a portion of the plaint claim and also to pay substantial amounts by way of cost to the plaintiff. He should

also be directed to pay reasonable amount by way of further costs to the High Court Legal Services Committee. Under these circumstances, I allow the Writ Petition subject to the following conditions:

Ext.P9 judgment of the learned District Judge and Exts.P6 and P7 orders of the learned Munsiff will stand set aside and I.A.Nos.11492/03 and 11369/03 filed by the petitioner before the trial court will stand allowed on condition that the petitioner complies with the following conditions:

1. The petitioner deposits a sum of Rs.15,000/- in a Nationalised Bank or a private sector Schedule Bank of his choice, gets a lien noted on the receipt for the decree debt in O.S.No.2078/98 and produces the receipt before the court below within one month from today.

2. The petitioner pays a sum of Rs.3000/- by way of cost to the plaintiff directly or to the plaintiff's counsel either in this court or in the court below within the aforesaid time-limit.

3. The petitioner also pays a sum of Rs.1500/- to the Kerala High Court Legal Services Committee within the above mentioned time-limit.

If the petitioner does not comply with all the conditions stipulated above, the impugned orders will stand confirmed and the Writ Petition will stand dismissed.

srd **PIUS C.KURIAKOSE, JUDGE**